

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

AZJA BANKS,

Plaintiff,

v.

UNIVERSITY OF ALASKA,

Defendant.

Case No. 3:23-cv-00082-SLG

**ORDER RE: DEFENDANT’S [FOURTH] MOTION TO DISMISS
AND UNOPPOSED MOTION TO MODIFY SCHEDULING
AND PLANNING ORDER**

Before the Court at Docket 37 is the University of Alaska (“Defendant”)’s [fourth] motion to dismiss. Plaintiff did not file a response to the motion. Also before the Court at Docket 40 is Defendant’s Unopposed Motion to Modify Scheduling and Planning Order.

I. Defendant’s Fourth Motion to Dismiss

Although filed as a second motion to dismiss, the filing at Docket 37 is in fact Defendant’s fourth motion to dismiss. The first motion to dismiss, filed in January 2024, asserted that Plaintiff had failed to properly perfect service on each of the named Defendants.¹ Plaintiff rectified the service deficiency.² The second motion to dismiss, filed in April 2024, asserted that all of Plaintiff’s claims were barred by

¹ Docket 13.

² Dockets 19, 20.

the Eleventh Amendment.³ The Court granted the motion with respect to claims under 42 U.S.C. § 1983 but allowed Plaintiff to file an amended complaint for her Title IX claims, from which the University is not immune.⁴ Plaintiff filed an amended complaint at Docket 27 that states a claim for Title IX violations against the Defendant. Defendant filed its third motion to dismiss on August 12, 2024, asserting that the Court did not have jurisdiction over the University of Alaska Anchorage, the University of Alaska System Office and the University of Alaska Board of Regents.⁵ The Court denied Defendant's third motion to dismiss, amended the case caption to name the correct defendant, and ordered Defendant to file its answer.⁶ The Court admonished Defendant that its challenge should have been made back in January 2024, when it filed its first motion to dismiss, rather than on a piecemeal basis.⁷

In this fourth motion to dismiss, Defendants seek dismissal of both of Plaintiff's Title IX claims in her Amended Complaint, as well any claims alleging First Amendment, Fourth Amendment, Fifth Amendment, and Fourteenth

³ Docket 18.

⁴ Docket 24.

⁵ Docket 29.

⁶ Docket 30.

⁷ Docket 13, 30.

Amendment violations, and claims under 28 U.S. Code 4101, for failure to state a claim for which relief may be granted.⁸

Plaintiff's Amended Complaint replaced her prior complaint in its entirety.⁹ In the Order re 12(b)(6) Motion to Dismiss at Docket 24, the Court provided Plaintiff with an opportunity to file an amended complaint that "states a cause of action under Title IX and states that Title IX is the jurisdictional basis for this action." However, Plaintiff's Amended Complaint lists amendments to the U.S. Constitution and 28 U.S.C. § 4101, in addition to her Title IX claims, as jurisdictional bases for this action; this may well have been an oversight by Plaintiff, as the Amended Complaint clearly pleads just two cause of action, both under Title IX.¹⁰ To the extent Plaintiff claims that Defendant violated her constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and 28 U.S.C. § 4101, the Court has already dismissed these claims and Plaintiff should not have included those references in her Amended Complaint.¹¹ However, Plaintiff has provided sufficient allegations in her Amended Complaint for both of her causes of action under Title IX to proceed. Therefore, Defendant's fourth motion to dismiss is DENIED as moot with respect to any claims under 28 U.S. C.

⁸ Docket 37.

⁹ Docket 27. See Fed. R. Civ. P. 15; Local Civil Rule 15.1.

¹⁰ Docket 27 at 2.

¹¹ See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

§ 4101 and the First, Fourth, Fifth, and Fourteenth Amendments as those claims have already been dismissed, and DENIED as to both causes of action under Title IX in the Amended Complaint.

II. Unopposed Motion to Modify Scheduling and Planning Order

On July 24, 2025, Defendant filed an unopposed motion to modify the scheduling and planning order issued by the Court at Docket 36.¹² Defendant averred that the parties had exchanged Rule 26 disclosures in accordance with the original scheduling and planning order and that Plaintiff requested that her deposition by Defendant be moved to November 4, 2025. Defendant requests adjustment to the discovery plan and pre-trial motions pursuant to Fed. R. Civ. P. 16(b)(4) as follows:

Section II: Discovery Plan

Paragraph C4: August 22, 2025 to January 9, 2026

Paragraph C5: October 3, 2025 to February 3, 2026

Paragraph C6a: August 22, 2025 to March 9, 2026

Paragraph C6b: September 22, 2025 to January 22, 2026

Paragraph C6c: October 3, 2025 to February 3, 2026

Section III. Pre-trial motions

Paragraph B3: October 17, 2025 to February 17, 2026

¹² Docket 40.

Paragraph B4: November 2, 2025 to March 9, 2026

Paragraph B5: November 2, 2025 to March 9, 2026

Defendant's Unopposed Motion to Modify Scheduling and Planning Order at Docket 40 is GRANTED.

III. Conclusion

Accordingly, with respect to Defendant's fourth motion to dismiss at Docket 37, IT IS ORDERED as follows:

1. Defendant's motion to dismiss is DENIED as moot with regard to Plaintiff's constitutional claims and claim under 28 U.S.C. § 4101.
2. With respect to the two causes of action included in the Amended Complaint alleging Title IX violations, Defendant's fourth motion to dismiss is DENIED.

IT IS FURTHER ORDERED that Defendant's Unopposed Motion to Modify Scheduling and Planning Order at Docket 40 is GRANTED. The Court's Scheduling and Planning Order at Docket 36 is modified according to the schedule set forth above.

DATED this 4th day of August 2025, at Anchorage, Alaska.

/s/ Sharon L. Gleason

UNITED STATES DISTRICT JUDGE